

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.3051 of 2006

Hirjibhai K.Gogri	.. Appellant.
Vs.	
The Municipal Corporation of Greater Mumbai	.. Respondent.

Mr.S.P.Srivastav for the appellant.
Mr.J.J.Xavier for the respondent.

**CORAM : D.B.BHOSALE, J.
DATED : 11TH DECEMBER, 2006**

P.C.:

1. Heard learned counsel for the parties.

2. Perused the compilation placed on record consisting of all relevant documents and the impugned judgment. The appeal is directed against the judgment and order dated 28.8.2006 by which the appellant's suit has been dismissed by the City Civil Court, Greater Mumbai. The suit was instituted against the notice dated 29.9.2005 under section 351 of the Bombay Municipal Corporation Act and against the order dated 8.11.2005 passed by the Assistant Municipal Commissioner. The suit structure is of brick massonary wall with A.C. sheet roof. Before the suit structure was purchased by the appellant in 1985, he claims that he was in possession thereof as licensee. Mr.Srivastav, learned counsel for the appellant invited my attention to the averments in the plaint and the documents relied upon by him to contend that the suit structure was in existence since prior to

datum line of 1964. He placed heavy reliance upon the assessment receipt showing the name of predecessor of the appellant. I perused the assessment receipt of 1989-90. This receipt is of no avail to the appellant to establish that the suit structure existed prior to datum line of 1964. Even the letter dated 2.11.1964, the another document to which my attention was drawn, addressed to the appellant does not pertain to the suit premises. None of the documents relied upon by the appellant show his name or that the suit structure was in existence on the datum line. As a matter of fact, since the appellant could not produce a single document in support of his claim that the suit structure is in existence since prior to 1964, the court below has rightly held that he is not entitled for protection under the Government policy being in existence since 1.1.1995. Moreover, it appears that the suit structure is obstructing municipal drain and is situated on compulsory open space in contravention of the Development Control Rules. None of the documents produced on record support the appellant to establish that the disputed structure is tolerated under the policy. I find absolutely no substance in the appeal. In the circumstances the appeal is dismissed. As prayed for by the learned counsel for the appellant, the interim order which operates till today shall remain operative for a period of eight weeks from today.

(D.B.Bhosale, J.)